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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/597,656	08/02/2006	Dickory Rudduck	PA046/CL 15451	4468
57346 7590 06/23/2009 TELEZYGOLOGY, INC. 520 W. ERIE STREET, SUITE 210 CHICAGO, IL 60654				
EXAMINER BRITTAIN, JAMES R				
ART UNIT		PAPER NUMBER		
3677				
MAIL DATE		DELIVERY MODE		
06/23/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/597,656

**Applicant(s)**

RUDDUCK ET AL.

**Examiner**

JAMES R. BRITTAIN

**Art Unit**

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

Applicant's election without traverse of Species I in the reply filed on April 2, 2009 is acknowledged.

***Specification***

The disclosure is objected to because of the following informalities: While applicant is using section headings from the international application, such is improper for the national filing and the section heading should be changed to conform with U.S. practice.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant asserts that the claim element "means" is a means (or step) plus function limitation that invokes 35 U.S.C. 112, sixth paragraph. However, it is unclear whether the claim element is a means (or step) plus function limitation that invokes 35 U.S.C. 112, sixth paragraph, because the appropriate use must include "means for" and so the use of "means" in claims 1, 5, 6, 8, 14, 16, 17-22 and 24 are of unclear scope. If

applicant wishes to have the claim limitation treated under 35 U.S.C. 112, sixth paragraph, applicant is required to:

(a) Amend the claim to include the phrase "means for" or "step for" in accordance with these guidelines: the phrase "means for" or "step for" must be modified by functional language and the phrase must **not** be modified by sufficient structure, material, or acts for performing the claimed function; or

(b) Show that the claim limitation is written as a function to be performed and the claim does **not** recite sufficient structure, material, or acts for performing the claimed function which would preclude application of 35 U.S.C. 112, sixth paragraph. For more information, see MPEP § 2181.

It is also noted that several of the "means" statements are inconsistent from their introduction to their later use in other claims and this creates a lack of proper antecedent basis that must be corrected.

The use of "optionally" (claim 14, line 11) and "and/or" (claim 16, line 6) fail to particularly point out and distinctly claim the subject matter of applicant's device and the alternative aspect must be deleted.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10 and 14-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kirchen et al. (US 5846039) in view of Hiraguri et al. (US 5707190). Kirchen et al. (figures 1-5) teaches a fastener including a longitudinal body 14, a first work engagement member 20, 40 mounted on the longitudinal body and adapted for movement relative thereto towards a work to be engaged, a second work engaging member 64 associated with the longitudinal body and a pawl 56 for adjusting the first work engaging member on the longitudinal body. The difference is that the second work engageable member acts in a folding manner and not as wings. It would have been obvious to use wings as the second work engaging member in view of Hiraguri et al. showing that rather than use folding engageable members as in figure 13 that it is preferable to use wings 20 as in figures 1 and 3d. As to claims 14, this method of assembly is obvious over the combined teachings of the references and with regard to claim 15 reversing the operation of the device of Hiraguri et al. through the threaded connection would permit the disassembly and thereby render obvious the subject matter. In regard to claim 16, further modification of Kirchen et al. so that rotation is required would have been obvious in view of Hiraguri et al. suggesting the use of rotation to create the movement. The structure of the remaining dependent claims is shown in either the pawl and ratchet tooth of Kirchen et al. or the threads of the device of Hiraguri et al. that define a spiral serration.

Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kirchen et al. (US 5846039) in view of Hiraguri et al. (US 5707190) as applied to claim 1 above, and further in view of Sato et al. (US 4347999).

Further modification of the device of Kirchen et al. so that it is used to secure a cable tie would have been obvious in view of Sato et al. (figures 3, 7) in which the band is inherently capable of securing a cable.

Claim 13 rejected under 35 U.S.C. 103(a) as being unpatentable over Kirchen et al. (US 5846039) in view of Hiraguri et al. (US 5707190) as applied to claim 1 above, and further in view of Yoshida et al. (4222303).

Further modification of the device of Kirchen et al. so that it is formed in a feeder strip would have been obvious in view of Yoshida et al. (figure 12) teaching such structure.

### ***Conclusion***

The patent to Kaibach et al. (US 5941668) teaches pertinent fastener structure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES R. BRITTAIN whose telephone number is (571)272-7065. The examiner can normally be reached on M-F 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Victor Batson can be reached on (571) 272-6987. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James R. Brittain/  
Primary Examiner, Art Unit 3677

JRB